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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate Interexchange Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of 1934)
as Amended)

CC Docket No. 96-61

REPLY COMMENTS OF OMNIPOINT COMMUNICATIONS INC.

Omnipoint Communications Inc. (Omnipoint), by its attorneys, hereby responds to the comments filed in the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding. The comments overwhelmingly demonstrate that the Commission should forbear from applying the rate integration requirement to CMRS as there has been no demonstrated public harm to redress through application of the rate integration requirement. If the Commission does not apply broad forbearance, at a minimum, the Commission should forbear from applying the rate integration requirement to wide area calling plans, roaming and airtime charges, and affiliated companies. If, however, the Commission does not forbear from applying the rate integration requirements to wide area calling plans, roaming and airtime charges and affiliated companies, then it should adopt narrowly tailored rules that minimize the harmful impact to the CMRS industry and consumers.

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I. FORBEARANCE IS IN THE PUBLIC INTEREST

As demonstrated by the comments, there is no evidence to suggest that discrimination exists in the CMRS market or that rate integration is necessary to ensure just and reasonable rates.¹ On the contrary, the comments demonstrate that the CMRS market is highly competitive² and that there are at least five CMRS providers in each geographic area of the country-- including Hawaii³-- which ensures that carriers will offer competitive pricing and service options to consumers. Application of rate integration requirements is only appropriate when there has been a demonstrated harm to the public interest, which has not been shown in this proceeding.

The comments, however, present an abundance of evidence that rate integration would harm competition by restricting the ability of CMRS providers to offer innovative

¹ As noted, even the States of Hawaii and Alaska, who are the only commenters that support the application of the rate integration requirement to CMRS, do not provide any evidence of discrimination or unreasonable rates.

² Personal Communications Industry Association (PCIA) Comments at 4-6, Cellular Telecommunications Industry Association (CTIA) Comments at 4-8, AT&T Wireless Services, Inc. (AT&T) Comments at 5, BellSouth Corporation (BellSouth) Comments at 8-10, Comnet Cellular, Inc. Comments at 4, GTE Service Corporation (GTE) Comments at 11-16, PrimeCo Personal Communications, L.P. Comments at 8-10.

³ BellSouth Comments at 8. In addition, GTE states that GTE Wireless provides CMRS service in Hawaii and offers the same regional and national rates as offered on the Mainland. GTE Comments at 13. Similarly, Nextel Communications, Inc. (Nextel) states that its National Business Plan, which allows subscribers to call anywhere in the United States, including Alaska and Hawaii and other offshore domestic locations, without incurring a separate long distance charge, is available to customers in Hawaii. Nextel Comments at 8.

and varied pricing plans and service options.⁴ The ability of carriers to quickly respond to the pricing plans of their competitors in new and innovative ways must be preserved to protect and further the development of competition. Thus, it is in the public interest for the Commission to forbear from applying the rate integration requirement to CMRS providers.

II. RATE INTEGRATION SHOULD NOT APPLY TO WIDE-AREA CALLING PLANS, AIRTIME AND ROAMING

If the Commission does not generally forbear from applying the rate integration requirement to CMRS providers, then, at a minimum, the requirement should not apply to wide-area calling plans and airtime and roaming charges. As an initial matter, wide-area calling plans, airtime and some types of roaming charges are not interstate interexchange service and, therefore, they are not subject to the rate integration requirement.⁵ Rather, a wide-area calling plan that extends the size of the calling area in which customers do not incur separate toll charges, is the “exchange area” as defined by the Act and, therefore, rate integration does not apply. As stated by CTIA and AT&T, rate integration should apply, if at all, only to separately stated charges for interMTA service or to calls that terminate outside a carrier’s designated local calling area, even if that calling area encompasses the entire country.⁶ Similarly, airtime charges, which are not toll charges

⁴ PCIA Comments at 6, CTIA Comments at 8, GTE Comments at 17, Nextel Comments at 11, AT&T Comments at 7-8.

⁵ GTE Comments at 7-9.

⁶ CTIA Comments at 10-11, AT&T Comments at 8-12.

and roaming charges for which there is not a separate toll charge, are not interexchange services.

Even if, however, the Commission finds that wide-area calling plans, airtime and roaming charges are interexchange services, the Commission should forbear from applying the rate integration requirement. As demonstrated in the comments, competition in the marketplace is sufficient to ensure that just and reasonable rates are charged for all CMRS services, including wide-area calling plans and roaming and airtime charges. Rate integration simply is not necessary to protect consumers or the public interest. Moreover, wide-area calling plans clearly benefit consumers and promote competition by tailoring calling plan options to reflect consumer needs and calling patterns within a community of interest. The application of the rate integration requirement would cause the elimination of such plans between communities of interest, to the detriment of consumers. According to BellSouth, for example, it would be forced to discontinue eight calling plans now available to specific communities.⁷

In any event, the Commission already has a number of mechanisms available to it to ensure just and reasonable and non-discriminatory rates, such as Sections 201 and 202 of the Act, which require carriers to charge all consumers just, reasonable and not unreasonably discriminatory rates and to refrain from unjust or unreasonably discriminatory practices. In addition, if the competitive marketplace changes at some

BellSouth Comments at 19.

point in the future such that additional mechanisms are necessary to protect consumers, the Commission could revisit the need to impose the rate integration requirement.

III. RATE INTEGRATION SHOULD NOT APPLY TO AFFILIATED COMPANIES

The comments demonstrate that the Commission should forbear from imposing the rate integration requirement across affiliated companies. Such a requirement would effectively eliminate a number of competitors in a given geographical region, resulting in a less competitive marketplace, higher prices and less choice for consumers.⁸ In addition, carriers would have less incentive to create new pricing plans for consumers, as rates would be required to be the same across any affiliated companies, even if they are competitors in a given market.

IV. ANY RATE INTEGRATION REQUIREMENT SHOULD BE NARROWLY TAILORED

If the Commission does not forbear from imposing the rate integration requirement on wide-area calling plans, roaming and airtime charges, and affiliated companies, then the requirement should be narrowly tailored to minimize the harmful effect to consumers and competition. Omnipoint supports the proposal of BellSouth to grandfather existing wide-area calling plans so that existing customers can keep those

⁸ AT&T Comments at 12.

plans⁹ should the Commission decide to enforce the rate integration requirement to CMRS providers.

Should the Commission elect to enforce the rate integration requirement across affiliates, Omnipoint supports eighty-percent ownership control as the appropriate standard to trigger the application of rate integration. As noted by other parties in this docket, CMRS providers have entered into a multitude of affiliations, which have served to expand CMRS availability to consumers and to increase the number of service and pricing options available to them. A restrictive definition of “affiliate” would reduce the choices available to consumers by requiring competitive CMRS providers to charge the same rates. The eighty-percent test will offer carriers the most flexibility in establishing rates and pricing plans. In the alternative, Omnipoint supports the position of BellSouth that the Commission should modify its affiliation rule for CMRS providers so that carriers are deemed to be affiliated only if one carrier exercises day-to-day management control over the other.¹⁰ Omnipoint also supports the position of CTIA and urges the Commission to deem entities that have separate licenses to serve a single market to be unaffiliated for rate integration purposes.¹¹

⁹ BellSouth Comments at 22.

¹⁰ BellSouth Comments at 20.

¹¹ CTIA Comments at 12.

Finally, Omnipoint supports Bell Atlantic's argument that the Commission should withhold further action on the CMRS rate integration requirement until the court resolves the legality of applying Section 254(g) to CMRS providers.¹² It is clear that there is no present harm to consumers that must be addressed by the immediate implementation of rate integration. Moreover, delaying action would prevent the Commission from potentially wasting its limited resources if its decision, ultimately, must be re-examined in light of the court ruling. Accordingly, there is no need for the Commission to act on this matter at this time.

V. CONCLUSION


Based on the foregoing, Omnipoint urges the Commission to forbear from applying the rate integration requirement to CMRS or, at a minimum, to forbear from applying the requirement to wide-area calling plans, roaming and airtime charges, and

¹² Bell Atlantic Mobile, Inc. Comments at 6.

affiliated companies. If the Commission does not forbear, then Omnipoint urges the Commission to impose narrowly tailored requirements, as outlined herein and in Omnipoint's Comments, in order to minimize the harmful effect on consumers and competition.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS INC.

By: 
Benjamin H. Dickens, Jr.
Mary J. Sisak
Its Attorneys

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW
Suite 300
Washington, DC 20037

(202) 659-0830

Dated: June 28, 1999

CERTIFICATE OF SERVICE

I, Althea B. Pierce, do hereby certify that on this 28th day of June, 1999, a copy of the foregoing Reply Comments of Omnipoint Communications Inc. was mailed by first class United States mail, postage prepaid, to the parties listed below:

C. Claiborne Barksdake
BellSouth Corporation
1100 Peachtree Street, NE
Suite 910
Atlanta, GA 30309-4599

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1144 Peachtree Street, NE
Suite 1800
Atlanta, GA 30309-2641

David G. Frolio
BellSouth Corporation
1133 21st Street, NW
Washington, DC 20036

Herbert E. Marks
Brian J. McHugh
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, NW
Washington, DC 20044

John W. Katz
Special Counsel to the Governor
Director, State-Federal Relations
Suite 336
444 North Capitol Street, NW
Washington, DC 20001

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, DC 20036

Jeffrey S. Linder
Angela N. Watkins
Nicole M. McGinnis
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

S. Mark Tuller
Vice President-Legal and External Affairs
General Counsel and Secretary
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

Raidza Wick, Esq.
America One Communications, Inc.
2650 Park Tower Drive
4th Floor
Vienna, VA 22180

Herbert Goldberg
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229-19th Street, NW
Washington, DC 20036

Bruce E. Beard
Vice President-Legal
SBC Wireless, Inc.
930 National Parkway
Schaumburg, IL 60173

Carol L. Tacker
Executive Vice President-Legal
SBC Wireless, Inc.
17330 Preston Road
Dallas, TX 75252

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Leonard J. Kennedy
Laura H. Phillips
Laura S. Roecklein
Dow, Lohnes & Albertson PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Howard J. Symons
Sara F. Seidman
Amy Rushyeager
Mintz, Levin, Chon, Ferris, Glovsky
& Popeo, P.C.
701 Pennsylvania Avenue, Suite 900
Washington, DC 20004-2608

Douglas I. Brandon
Vice President-External Affairs
AT&T Wireless Service, Inc.
1150 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

Katherine M. Harris
Davida M. Grant
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Mary McDermott
Chief of Staff and Senior Vice-
President
Government Relations
Mary Madigan Jones
Vice President, External Affairs
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Daniel P. Dwyer
President and Chief Operating
Officer
Commnet Cellular, Inc.
8350 East Crescent Parkway
Englewood, CO 80111

Frank Michael Panek
Counsel for Ameritech
2000 West Ameritech Center Drive
Room 4H84
Hoffman Estates, IL 60195

Jonathan M. chambers
Roger C. Sherman
Sprint Spectrum L.P. d/b/a Sprint PCS
1801 K Street, NW, Suite M112
Washington, DC 20006

William L. Roughton, Jr.
Associate General Counsel
601 13th Street, NW
Suite 320 South
Washington, DC 20005

Michael F. Altschul
Vice President, General Counsel
Randall S. Coleman
Vice President, Regulatory, Policy & Law
Cellular Telecommunication Industry Assn.
1250 Connecticut Avenue, NW
Washington, DC 20036

International Transcription Service*
1231 20th Street, NW
Washington, DC 20036

A handwritten signature in black ink, appearing to read 'Althea B. Pierce', is written over a horizontal line.

Althea B. Pierce